

**VIRGINIA BOARD OF MEDICINE  
FULL BOARD MINUTES**

Thursday, February 19, 2009

Department of Health Professions

Richmond, VA

**CALL TO ORDER:** The meeting convened at 8:50 a.m.

**MEMBERS PRESENT:** Stephen Heretick, JD, President  
Jane Piness, MD, Vice-President  
Valerie Hoffman, DC, Secretary-Treasurer  
Gen. Clara Adams-Ender, RN, MSN, USA Retired  
Sandra Anderson Bell, MD  
Ann T. Burks, JD  
Malcolm Cothran, MD  
Claudette Dalton, MD  
Gopinath Jadhav, MD  
Jennifer Lee, MD  
Stuart Mackler, MD  
Roderick Mathews, JD  
Juan Montero, MD  
Karen Ransone, MD  
Wayne Reynolds, DO  
Ellen Shapiro, DPM

**MEMBERS ABSENT:** William Epstein, MD

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Jennifer Deschenes, JD, Deputy Executive Director, Discipline  
Barbara Matusiak, MD, Medical Review Coordinator  
Ola Powers, Deputy Executive Director, Licensing  
Colanthia Morton Opher, Operations Manager  
Amy Marschean, JD, Assistant Attorney General  
Emily Wingfield, JD, Deputy Director, Department of Health Professions  
Elaine Yeatts, DHP Senior Policy Analyst

**OTHERS PRESENT:** Deren Bader, CPM, DrPh, Chair, Midwifery Advisory Board  
Michael Jurgensen, Medical Society of Virginia  
Chelsea Miller, HDJN

**ROLL CALL**

**EMERGENCY EVACUATION INSTRUCTIONS**

Dr. Piness read the Emergency Egress Instructions.

## **APPROVAL OF MINUTES OF OCTOBER 23, 2008**

Ms. Burks moved to approve the minutes of October 23, 2008 as amended. The motion was seconded and carried.

## **ADOPTION OF THE AGENDA**

Mr. Mathews moved to approve the agenda as presented. The motion was seconded and carried.

## **PUBLIC COMMENT ON AGENDA ITEMS**

Mr. Heretick acknowledged guests and opened the floor for public comment. There was no public comment.

## **DHP DIRECTOR'S REPORT**

In Ms. Ryals' absence, Mr. Heretick advised that the Board of Medicine has not only surpassed the 90% goal for the 250-day closure rate, but is currently at 94%.

Mr. Heretick acknowledged the hard work of the Board members and especially board staff noting his contact on weekends, late nights, and even holidays in order to resolve case issues. Mr. Heretick went on to give praise to staff for their incredible eye for detail and their dedication as public servants.

Mr. Heretick and the Board unanimously moved to commemorate their thanks to Board staff for their hard work which has facilitated the Board's achievement of its 94% closure rate.

On behalf of staff, Dr. Harp thanked the Board for their acknowledgement.

## **EXECUTIVE DIRECTOR'S REPORT**

### Gen. Adams-Ender's Candidacy for FSMB Nominating Committee

Dr. Harp reported that General Adams-Ender is one of seven finalists being considered for a seat on the Nominating Committee of the Federation of State Medical Boards. Dr. Harp encouraged the members to do what they could to support her candidacy.

### Gen. Adams-Ender's Attendance at the National Governor's Association

Dr. Harp informed the Board that General Adams-Ender attended the State Alliance for e-Health Licensure Meeting February 5-6, 2009 hosted by the National Governor's Association (NGA) in Nashville, TN. The purpose of the meeting was to identify the essentials for initial licensure and discuss barriers to the interstate practice of medicine. General Adams-Ender

acknowledged that during the discussions eleven criteria were identified as essential for initial licensure. She advised that the report will be submitted to the NGA who will continue with the process. Dr. Harp voiced his appreciation for all of her efforts.

#### New Licensing Specialists

Dr. Harp introduced Ms. Delores Cousins, Licensing Specialist for Medicine and Surgery, Osteopathy, Podiatry and Chiropractic, and Ms. Tamara Farmer, Licensing Specialist for Athletic Training, Respiratory Care, Occupational Therapy, Occupational Therapy Assistants, and Midwifery as the newest members joining the staff of the Board of Medicine. Dr. Harp noted they have been great additions to the Board.

#### Revenue and Expenditure Report

Dr. Harp advised that the Board of Medicine is solvent.

#### Health Practitioners Intervention Program Statistics

Dr. Harp acknowledged a slight increase in number of participants, and advised that Ms. Wingfield will address the proposed program changes later in the agenda.

#### Physician Assistants and Fluoroscopy

Dr. Harp referred to the letter from Thomas Schuler, MD appealing to the Board for consideration in allowing properly trained Physician Assistants to operate a stationary fluoroscopy machine. Dr. Harp informed the Board that the matter was discussed at both the Advisory Boards on Radiologic Technology and Physician Assistants. He also advised that the advisory board chairs, Elizabeth Meixner, RT and Diana Houle, PA will be meeting to discuss the current law and regulations and possible alternative language.

#### Miscellaneous Items

Dr. Harp advised that the Federation of State Medical Boards is currently recruiting for a new president to replace Jim Thompson, MD. He encouraged those interested to contact FSMB.

Dr. Harp asked the Board to remember Trent Peirce, MD, Chairman of the Arkansas State Medical Board, who was critically injured February 3, 2009.

Dr. Harp reminded the Board that the seat representing the 10<sup>th</sup> District has been vacant since 2007 and that a replacement for John Armstrong, MD has not been named.

Dr. Harp informed the Board that he has been invited to do a field review of the cardiac effects of prolonged QT in the context of methadone treatment.

Dr. Harp also informed the Board that the Virginian Pilot had published an article on a physician and his prescribing in Tidewater three weeks earlier and that a follow up story would appear in the near future.

## **COMMITTEE AND ADVISORY BOARD REPORTS**

Dr. Cothran moved to accept the Committee and Advisory Board meeting reports en bloc. The motion was carried.

Dr. Cothran asked for clarification of the minutes of Legislative Committee and Committee of Joint Board.

•Legislative Committee Meeting – Agenda Page 36 –Dr. Cothran questioned the status of the legislative proposal involving the establishment of administrative fees to cover the cost of disciplinary hearings. Ms. Yeatts advised that the Department did not recommend it as part of the package that was submitted to the 2009 General Assembly. As a side note, Ms. Yeatts advised that the Board of Dentistry was able to obtain this authority from the General Assembly. Ms. Yeatts suggested that if the Board of Medicine wished to pursue this authorization a legislative proposal would need to be adopted at the Full Board meeting in June, and after all the proper preliminaries are completed, it could be presented to the agency director for consideration for the 2010 General Assembly packet.

•Executive Committee Meeting – Agenda Page 57 – Dr. Cothran inquired about the status of the draft legislative proposal to the Governor's Health Reform Commission to address healthcare workforce shortages and access to health care. He stated that with 2% or less of physician population choosing the practice of primary care, it only stands to reason that the use of physician extenders should be expanded. Ms. Yeatts responded that the report (Agenda Pages 57-59) does a thorough job of capturing the goal and labor of the workgroup, however; a compromise was not able to be reached so the proposal was tabled with hopes of re-submitting in 2010.

Ms Burks questioned the background information item on Page 59 – “Requirements for physicians need to be adjusted to allow competent nurse practitioners to provide care within scope of practice to help address increasing long-term care needs for our elderly and disabled citizens and significant uninsured population”. Ms. Burks inquired as to whether care to the identified groups would be restricted to extenders only with no access to the physician. During the discussion, Dr. Dalton commented that it's been reported that the nurse practitioners and physician assistants can no more afford to offer free health care than a physician even if they wanted to. Dr. Harp stated that the language on page 59 would appear to refer to the supervisory relationship of physicians with nurse practitioners.

Dr. Dalton asked for an update on the discussion at a previous meeting regarding the dissolution of the Committee of the Joint Boards of Medicine and Nursing. Dr. Dalton remarked that in light of the previous discussion, the dissolution of the Joint Boards would appear to be somewhat problematic. Ms. Yeatts advised that currently there are philosophical differences in the terminology of the phrase “supervision” and that no middle ground has been reached by the parties involved, therefore, a proposal to dissolve the Joint Boards has not been submitted.

Dr. Harp noted that for clarification purposes in the Legislative Committee Minutes - Page 38 – a phrase be added that advises the USP has changed the definition of immediate-use ~~to be just that to~~ use of the product immediately. The Board agreed that the revision be suggested to the Legislative Committee.

At the end of the discussion, the motion to accept all reports was carried unanimously.

## **Other Reports**

### Assistant Attorney General –

Ms. Marschean informed the Board that Dr. Vuyyuru's federal case was dismissed. Dr. Ahmed's appeal has also been dismissed. Ms. Marschean advised that to her knowledge he has not filed another appeal.

### Board of Health Professions

Dr. Montero advised that David Boehm, L.C.S.W, was re-elected to serve as Chair of the Board.

### Podiatry Report

No report.

### Chiropractic Report

No report

## **New Business**

### Legislative Report

Ms. Yeatts provided an updated report of the 2009 Session of the General Assembly. This information was provided for informational purposes only.

### Regulatory Report

## **Chart of Regulatory Actions**

Ms. Yeatts briefly reviewed the status on regulations in development for the Board of Medicine. This information was provided for informational purposes only.

Mr. Heretick called for break at 10:00 a.m. The meeting resumed at 10:20 a.m.

## **Adoption of Proposed Final Regulations for Occupational Therapy Assistants**

Ms. Yeatts advised that these are replacements for the emergency regulations currently in effect. Dr. Bell moved to adopt the proposed regulations for licensure of occupational therapy assistants. The motion was seconded and carried unanimously.

## **Response to Petition for Rulemaking**

Ms. Yeatts reviewed the petition submitted by Percy Ramos, MD requesting the Board to allow MDs practicing with an unrestricted license in another state the option to use that time in lieu of a portion of the current required post-graduate training.

After a brief discussion, Dr. Hoffman moved to reject the petition. The primary reason stated was the Board's current allowance for the substitution of other postgraduate training for one of the two years required in an approved residency or internship program. The motion was seconded and carried unanimously.

Dr. Harp advised that he would communicate the Board's decision to Dr. Ramos.

## **Midwifery Workgroup**

Dr. Harp made introductory comments regarding the formation and charge of the workgroup. He advised that the purpose of the agenda item was to give an update on the progress made and although no action was required at this time, the Board's support for the continued efforts of group would be appreciated.

Dr. Harp advised that the workgroup, comprised of Deren Bader, CPM, DrPH, Jane Piness, MD, Elaine Yeatts, and Dr. Harp met January 23, 2009 and discussed the issue of high-risk pregnancies and how they should be handled in midwifery practice. Dr. Harp noted that options regarding the removal of a phrase in §54.1-2957.9 that prohibits required consultation, and amendments to §54.1-3408 that would give the Board authority to promulgate regulations on high-risk pregnancies and allow midwives to possess and administer certain drugs. Dr. Harp felt that all involved left with a better understanding of the other profession's concerns, and was encouraged by the open dialogue in moving forward.

Dr. Harp further advised that when the workgroup's discussion was presented at the Advisory Board on Midwifery, there was considerable hesitancy in making any changes to the existing law. Dr. Harp then informed the Board that HB2163 passed out of the House and it will require midwives to disclose to their patients information on health risks associated with home deliveries including but not limited to special risks associated with vaginal births after a prior C-section, breech births, births by women experiencing high-risk pregnancies, and multiples.

Dr. Bader also addressed the Board and reiterated the concerns and findings of the workgroup. She stated that she thought that with continued work by an expanded group, the workgroup could offer recommendations for amendments that would satisfy the concerns of all involved.

Dr. Piness added that it was a good work session and looks forward to progress on this issue. She added that not knowing the long term implications of the bill, the wording was not as strong and it should be.

The Board expressed concern about the level of pharmacology education and agreed that this is an issue that needs to be resolved before any consideration be given to amend §54.1-3408. Dr. Piness responded and advised that this issue was identified by the workgroup and will be reviewed. Dr. Bader clarified that in no way was this a request for prescriptive authority.

All agreed that the protection and safety of the mother and child are paramount for both professions and that each must strive to build a relationship that will be workable into the future.

Mr. Heretick thanked the workgroup members for the job they've done so far.

#### Polysomnography Report

Justin Crow, Research Assistant with the Board of Health Professions, gave an informative presentation on the rapidly growing field of polysomnography. Mr. Crow advised the Board of the national and state positions on this profession, and stated that the national organizations have been unable to resolve their differences on what should be the proper form of regulating the practice.

Mr. Crow will be providing comments received to the Advisory Board on Respiratory Care regarding regulation of this profession after the close of the comment period.

#### Department of Health Professions

Emily Wingfield, DHP Assistant Agency Director, addressed the Board and gave a quick update on the progress HB2407 which revises the Health Practitioners' Intervention Program (HPIP).

Ms. Wingfield advised that HPIP will undergo a name change. The program's name will become the Health Practitioner's Monitoring Program (HPMP). This change is based on the Department's belief that it more accurately reflects what the program is for; monitoring and not treatment.

Additionally, Ms. Wingfield noted that this bill would provide immunity from civil liability for any act, decision or omission resulting from duties as a member or agent of the Department, and would also give the program authority to assess fees from participants. Ms. Wingfield also noted that the authority to grant a stay and other functions may be delegated to agency staff. Lastly, Ms. Wingfield stated the program would no longer monitor individuals with a suspended or revoked license until they applied for reinstatement and would not provide



secondary monitoring for licensees practicing outside of the Commonwealth.

#### Alabama Resolution

Dr. Harp informed the Board that Alabama is seeking support of a resolution that will be presented at the FSMB's annual meeting. As outlined in the cover, the resolution is asking for a change in the bylaws that would reduce the number of individuals serving on the Board of Directors or holding positions as FSMB officers who no longer serve on their state boards.

After a brief discussion, Dr. Hoffman moved to take no action. The motion was seconded and carried unanimously.

#### Disciplinary Report

Jennifer Deschenes, Deputy Director for Discipline, reviewed the case actions taken in 2007-2008 for each of the professions under the jurisdiction of the Board of Medicine. Ms. Deschenes also gave a quick overview of the proceedings and cases settled by consent order. Ms. Deschenes reported that overall, the Board is above the 90% performance standard measure, and thanked the members for all their efforts.

#### Nominating Committee

Mr. Heretick accepted the voluntary participation of Dr. Bell, Dr. Montero, Dr. Reynolds and Ms. Burks on the 2009 Nominating Committee. The Committee will present a slate of officers for approval at the June 25, 2009 meeting.

#### Continued Competency Committee

Dr. Dalton advised the Board that the Continued Competency Ad Hoc Committee is being resurrected. Dr. Dalton pointed out that given the interest of the public, including AARP, this would be a timely issue to undertake. She said that she has approached several board members regarding their participation. In addition, she is looking to add to the group a representative from the hospital sector and Ms. Powers, from Medicine Licensing. She invited anyone interested in participating to contact her.

#### Board Retreat

Dr. Harp reminded the Board of attempts to schedule a retreat, and advised that staff would be following up regarding date availability.

#### October Meeting Date

Dr. Ransone moved to change the scheduled October 22-24, 2009 meeting date due to a conflict that may affect several board members. After discussion, the motion was passed. Board staff will follow up and confirm the date change when made.



Summary Suspension

Pursuant to §54.1-2408.1 the Board received information in order to determine if Susan Jones' ability to practice as a respiratory care practitioner constituted a substantial danger to public health and safety. Mr. Schliessmann, AAG, assisted by Virginia Scher, AAS, provided details of the case for the Board's determination.

On a motion made by Dr. Bell, and duly seconded, the Board determined voted to summarily suspend her license simultaneous with the institution of proceedings for a formal administrative hearing pursuant to §54.1-2408.1 of the Code of Virginia.

The vote was unanimous.

**Next meeting** – June 25-27, 2009

**Adjournment** – With no other business to conduct, the meeting adjourned at 12:20 p.m.

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Stephen Heretick, JD, President  
Chair

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William L. Harp, M.D.  
Executive Director

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Colanthia M. Opher  
Recording Secretary